October 26, 2015

Via ECF

The Honorable Lorna G. Schofield
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, 13 Civ. 7789 (LGS)

Dear Judge Schofield:

We write on behalf of Defendants Credit Suisse, Deutsche Bank, Morgan Stanley, The Bank of Tokyo-Mitsubishi UFJ, Royal Bank of Canada, Société Générale, and Standard Chartered PLC (the "Non-Settling Defendants") in response to the Motion for Preliminary Approval of Settlement Agreements With Bank of America, Barclays, BNP Paribas, Citigroup, Goldman Sachs, HSBC, JPMorgan, RBS, and UBS (the "Settling Defendants"). In that motion, Plaintiffs request that the Court enter an order preliminarily approving the settlements, preliminarily and conditionally certifying the settlement classes, and appointing class counsel and representatives for the settlement classes. The proposed order would also stay the action as to the Settling Defendants. Plaintiffs do not submit a plan of distribution with their preliminary approval order, stating that they will submit one for the Court's approval at a later date and only at that point will notice be sent to purported settlement class members. Plaintiffs seek to certify a settlement class that is extraordinary in scope, covering every currency pair and every FX-related instrument traded over the course of ten years. The Non-Settling Defendants intend to vigorously challenge certification of that class in this litigation. Accordingly, regardless of whether the Court grants preliminary approval of the settlement, the Non-Settling Defendants respectfully request that the following amendments be made to any such order:

1. The Court should add the following language to the order, making entirely clear that the approval of a *settlement* class is without prejudice to the Non-Settling Defendants' ability to challenge certification of a *litigation* class: "[The] Court's [preliminary] certification of the Settlement Class, and appointment of Plaintiffs as Class Representatives, as provided herein is without prejudice to, or waiver of, the rights of any Defendant other than [Settling Defendants] to contest certification of any other class proposed by Plaintiffs. The Court's findings in this [Preliminary Order] shall have no effect on the Court's ruling on any motion to certify any class in this litigation, or appoint Class Representatives, and no party may cite or refer to the Court's approval of the Settlement Class as binding or persuasive authority with respect to any motion to certify such class or appoint Class Representatives." This language is based on the preliminary approval order entered in *In re Packaged Ice Antitrust Litigation*, 2010 WL 3070161, at *5 (E.D. Mich. Aug. 2, 2010); *see also In re Air Cargo Shipping Services Antitrust Litigation*, 2008 WL 5958061, at *1 (E.D.N.Y. Sept. 26, 2008)(JG).

2. The Court should make clear that any stay of the proceedings as to the Settling Defendants does not stay discovery of them. There currently is one discovery request pending of the Settling Defendants, which seeks documents, data and communications related to any potential settlement. As the settlement papers make clear, Plaintiffs intend to seek and obtain extensive documentation from the Settling Defendants—in fact, Plaintiffs justify seeking preliminary approval now prior to their having formulated a Plan for Distribution and Notice Plan as necessary to "trigger critical settlement cooperation." (ECF No. 480 at 3). It would be highly unfair for the Non-Settling Defendants to be denied the opportunity to seek information as well from the Settling Defendants.[1] Such information is indispensable to determining the scope of and participants in the alleged conspiracy at the heart of Plaintiffs' complaint. This is not just speculation. The information upon which Plaintiffs state they relied in filing that complaint, such as the guilty pleas by a number of the Settling Defendants, makes clear that the alleged conspiracy actually *excluded* the Non-Settling Defendants. *See*, *e.g.*, *U.S.A.* v. *JPMorgan Chase & Co.*, Plea Agreement, ¶4(h) (D. Conn. May 20, 2015) ("In furtherance of the conspiracy, the defendant and its co-conspirators engaged in communications, including near daily conversations, some of which were in code, in an *exclusive* electronic chat room which chat room participants, as well as others in the FX Spot Market, referred to as 'The Cartel' or 'The Mafia.'") (emphasis added). Yet Plaintiffs continue to advance the contrary theory that *all* financial institutions engaged in a single worldwide conspiracy that lasted for more than a decade. Indeed, the existence of such a conspiracy is at the heart of their justification for class certification. (ECF No. 480 at 31).

The Non-Settling Defendants reserve all rights to object to the settlement or seek other appropriate relief in connection with the process leading up to the fairness hearing, including as to whether and to what extent that process should be coordinated with the overall litigation of this matter in regard to class certification or otherwise.

The Non-Settling Defendants can file more formal papers, including a proposed mark-up of the preliminary approval order, if the Court so desires.

Respectfully submitted on behalf of the undersigned:

[1] All discovery is currently stayed as to the New Defendants (The Bank of Tokyo-Mitsubishi UFJ, Royal Bank of Canada, Société Générale, and Standard Chartered PLC) and the New Defendants do not intend to seek the document discovery discussed above at this time.

CAHILL GORDON & REINDEL LLP

By: /s/ David G. Januszewski
David G. Januszewski
Herbert S. Washer
Elai Katz
Jason M. Hall
80 Pine Street
New York, New York 10005
Telephone: (212) 701-3000
Facsimile: (212) 269-5420
djanuszewski@cahill.com
hwasher@cahill.com
ekatz@cahill.com
jhall@cahill.com

Attorneys for Defendants Credit Suisse Group AG, Credit Suisse AG, and Credit Suisse Securities (USA) LLC

KIRKLAND & ELLIS LLP

By: /s/ Joseph Serino, Jr.
Robert Khuzami
Joseph Serino, Jr., P.C.
Eric F. Leon, P.C.
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
robert.khuzami@kirkland.com
joseph.serino@kirkland.com
eric.leon@kirkland.com

G. Patrick Montgomery (*pro hac vice*)
655 Fifteenth Street, N.W.
Washington, D.C. 20005-5793
Telephone: (202) 879-5000
Facsimile: (202) 879-5200
patrick.montgomery@kirkland.com

Attorneys for Defendant Deutsche Bank AG

WACHTELL, LIPTON, ROSEN & KATZ

By: /s/ Jonathan M. Moses
Jonathan M. Moses
Bradley R. Wilson
51 West 52nd Street
New York, NY 10019
Telephone: (212) 403-1000
Facsimile: (212) 403-2000
JMMoses@wlrk.com
BRWilson@wlrk.com
KDCole@wlrk.com

MARINO, TORTORELLA & BOYLE, P.C.
Kevin H. Marino
John D. Tortorella
437 Southern Boulevard
Chatham, NJ 07938
Telephone: (973) 824-9300
Facsimile: (973) 824-8425
kmarino@khmarino.com
jtortorella@khmarino.com
Attorneys for Defendants Morgan Stanley and Morgan Stanley & Co. LLC

LINKLATERS LLP

By: /s/ James R. Warnot, Jr.
James R. Warnot, Jr.
Patrick C. Ashby
1345 Avenue of the Americas
New York, New York 10105
Telephone: (212) 903-9000
Facsimile: (212) 903-9100
james.warnot@linklaters.com
patrick.ashby@linklaters.com

Attorneys for Defendant Société Générale S.A

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

By: /s/ Andrew C. Finch
Andrew C. Finch
Kenneth A. Gallo
Michael E. Gertzman
1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 373-3000
Facsimile: (212) 757-3990
afinch@paulweiss.com
kgallo@paulweiss.com
mgertzman@paulweiss.com

Attorneys for Defendant The Bank of Tokyo-Mitsubishi UFJ, Ltd.

MOORE & VAN ALLEN, PLLC

By: /s/ James P. McLoughlin, Jr.
James P. McLoughlin, Jr.
Neil T. Bloomfield
100 North Tryon Street, Suite 4700
Charlotte, North Carolina 28202
Telephone: (704) 331-1000
Facsimile: (704) 331-1159
jimmcloughlin@mvalaw.com
neilbloomfield@mvalaw.com

Attorneys for Defendant RBC Capital Markets, LLC

SIDLEY AUSTIN LLP

By: /s/ Andrew W. Stern
Andrew W. Stern
Nicholas P. Crowell
Alan M. Unger
787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300
Facsimile: (212) 839-5599
astern@sidley.com
ncrowell@sidley.com
aunger@sidley.com

Attorneys for Standard Chartered PLC